

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands))))	WT Docket No. 06-150
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems))))	CC Docket No. 94-102
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones))	WT Docket No. 01-309

**COMMENTS OF
VERMONT DEPARTMENT OF PUBLIC SERVICE,
VERMONT PUBLIC SERVICE BOARD,
VERMONT OFFICE OF THE CHIEF INFORMATION OFFICER,
NORTH DAKOTA PUBLIC SERVICE COMMISSION,
NEBRASKA PUBLIC SERVICE COMMISSION,
CONNECTME AUTHORITY, AND
MAINE OFFICE OF THE CHIEF INFORMATION OFFICER**

To: The Commission

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FCC Docket Nos. 06-150, 94-102, and 01-309 (FCC 06-114)
Vermont / North Dakota / Nebraska / Maine Comments

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SUMMARY

The 700 MHz spectrum has favorable propagation characteristics for serving rural and small markets. Licensing much of the remaining 700MHz blocks on the relatively small Cellular Market Area basis will be more likely to match up rural and small markets with licensees who will serve them rapidly. The Commission should strengthen performance requirements for licensees to ensure rural service, and should require licensees to provide service to either 90% of the population within their license area, or 75% of the geographic area, within eight years, as well as meet interim milestones. The Commission should adopt a keep-what-you-use mechanism to re-allocate unused spectrum. Reviewing performance at the time of a renewal application and substituting such a review for one based on competing proposals is appropriate if there are high standards. Review of performance should not be limited to license renewal times. With high performance expectations and keep-what-you-use in place, a ten-year license term would be appropriate. Increasing permitted power output in the upper 700 MHz band from 1 kW ERP to 2 kW ERP could help provide more coverage and should be an option for licensees in rural areas. Secondary markets are useful for promoting the greater availability of service, but should be seen as complement to, not a substitute for, mechanisms such as keep-what-you-use.

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1. The 700 MHz spectrum is the most favorable spectrum to become available in a generation for providing wireless communications services to rural areas. Rural areas in many ways stand to benefit the most from wireless services due to the ability of wireless technology to provide telecommunications services over a wide area at a relatively lower cost. Yet rural areas too often have fewer services and poorer wireless coverage than more urbanized areas. If there

is any block of spectrum that ought to be used to provide wireless communications services in less densely populated areas, it is the 700 MHz spectrum.

2. The Commenters all represent states with substantial rural areas. All are concerned about the many communities within their borders that still lack the wireless telephone and broadband services that much of the country now takes for granted. Lack of wireless service is perceived as a serious public policy issue, and has been the subject of some combination of legislative, administrative, and PUC initiatives in Vermont, North Dakota, Nebraska and Maine.¹

3. In Vermont, Maine, and Nebraska, the lack of wireless coverage and the desirability of expanding it in rural areas has also been a factor in making determinations that wireless CETC designations are in the public interest.²

¹ For example, the North Dakota Public Service Commission has led with its “Zap the Gap” initiative targeting gaps in CMRS service (<http://pc6.psc.state.nd.us/jurisdiction/pud/telecom/wireless/wireless-info.html>). In Maine, both the state’s Chief Information Officer and its PUC Chairman have been appointed to the ConnectME Authority (www.maine.gov/connectme), which is charged with advancing broadband and wireless services in Maine. In Nebraska, the Public Service Commission has established the Nebraska Internet Enhancement Fund (NIEF) program (http://www.psc.state.ne.us/home/NPSC/communication/NIEF/comm_NIEF.html), which gives financial assistance for the installation and delivery of broadband and other advanced telecommunications services to communities applying for assistance. While the program is open to anyone providing a qualified broadband service, most of the grant proposals reviewed by the Commission and ultimately awarded have been for wireless access. The Nebraska Commission also has an ongoing broadband survey docket which applies to wireline and wireless broadband providers (<http://www.psc.state.ne.us/home/NPSC/broadband/broadband.html>). In Vermont, the Department of Public Service’s *Vermont Telecommunications Plan* has established a goal of achieving wireless service along all of the state’s numbered highways by 2010 and the Office of the Chief Information Officer has established a Wireless Telecommunications Infrastructure Advancement initiative to provide siting, funding, and business assistance to wireless phone and broadband providers.

² *In re: Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996 (In re: RCC Atlantic, Inc. d/b/a Unisel)*, Vermont Public Service Board Docket 5918, Order of 11/14/2003 at 27 (<http://www.state.vt.us/psb/orders/2003/files/5918final.pdf>); *Petition of RCC Atlantic Inc. for designation as an Eligible Telecommunications Carrier in areas served by rural telephone companies under the Telecommunications Act of 1996*, Vermont Public Service Board Docket 6934, Order of 9/29/2004 at 35-37 (<http://www.state.vt.us/psb/orders/2004/files/6934fnl.pdf>); *U.S. CELLULAR Request for Designation as Eligible Telecommunications Carrier*, Maine Public Utilities Commission Docket No. 2004-246, Order of 9/8/2005 at 3; *In the Matter of the Application of Alltel Communications of Nebraska, Inc., for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934*, Nebraska Public Service Commission Application No. C-3497, Order of 3/7/2006 at 16-18 (<http://www.psc.state.ne.us/home/NPSC/communication/orders/Misc/C3497060307.pdf>); *In the Matter of the Petition of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, Fort Morgan, Colorado, for designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2)*, Nebraska Public Service Commission

II. LICENSE ADDITIONAL SPECTRUM OVER SMALL SERVICE AREAS

4. The Commission has sought comment on whether it should license some of the 700 MHz spectrum over smaller service areas than the 6 Economic Area Groupings (EAG) that cover the United States.

5. While the 700 MHz spectrum is especially well-suited to serving rural areas, licensing on an EAG basis naturally encourages licensees to focus on the many large metropolitan markets that these areas contain.

6. The Commission should revise its initial determination that the remaining 700 MHz blocks will be licensed on an (EAG) basis. Instead, the Commission should utilize for most of these blocks the smallest service area that it has commonly used in the past, the Cellular Market Area (CMA). Licensing over the more numerous CMAs requires licensees to better distribute service across diverse locales around the country.

7. CMAs are divided into Metropolitan Service Areas (MSAs) and Rural Service Areas (RSAs), which helps to ensure that there are licensees which are obligated to provide service to these different types of local markets. Issuing separate licenses for RSAs will mean that licensees for these areas will have greater accountability for serving the needs of small and rural markets.

8. Licensing on a CMA basis will enable bids by smaller and rural-focused service providers which may be capable of serving a smaller area but may be unable to compete successfully for a service area as large as an EAG. In the experience of the Commenters, while various types of carriers provide service in various rural markets, smaller and rural-focused

service providers are generally more likely to expand service in rural and small markets than large, nationally-focused service providers.

9. The Commission should license most of the additional 700 MHz spectrum on a CMA basis despite the recent assignment of other spectrum on a CMA basis, such as in the AWS auction. The 700 MHz spectrum is especially well-suited to providing wide-ranging coverage, more so than other spectrum recently auctioned, and the licensing requirements surrounding it should be structured so as to encourage such coverage. Furthermore, the recent AWS auction demonstrates that carriers seeking a national footprint are capable of bidding in large numbers of CMA auctions to acquire greater amounts of spectrum over a larger area.

10. The Commenters are not opposed to licensing some (but not most) of the remaining 700 MHz spectrum over service areas larger than the CMA. This would provide a place in the 700 MHz spectrum that is oriented to the needs of carriers seeking to provide services over a wide, contiguous footprint that includes multiple metropolitan areas. The best candidate for licensing on a larger service area basis may be the D block of the upper 700 MHz band. This block offers the largest amount of bandwidth, and lack of bandwidth is a greater concern in metropolitan areas with many users than it is in rural areas with fewer users. It also has the highest frequency, and lower frequencies have the best propagation characteristics that are of the most value to rural, low-density areas.

11. Nevertheless, it is not necessary to license over areas as large as EAGs in order to obtain the benefits of a relatively large license area. The FCC will obtain the benefit of a larger pool of bidders if it licenses some 700 MHz spectrum over larger service areas that are nevertheless not as large as the EAG. A large-sized license area that is smaller than the EAG is the Major Trading Area (MTA). This type of area would still allow bidders to obtain large geographic reach for their services. It has also been used previously in PCS and SMR licensing.

III. REVISE PERFORMANCE REQUIREMENTS TO ENSURE RURAL SERVICE

A. Reasons a Strong Performance Requirement is Essential

12. It is essential that the Commission revise its performance requirements for the 700 MHz bands to be auctioned so that not only do they not discourage business plans that include rural and small markets but ensure that those receiving licenses covering rural areas will in fact provide service to rural areas.

13. While it has been the recent policy of the Commission to provide greater flexibility in its rules regarding coverage requirements so as to allow licensees to pursue a variety of business plans and adapt to market conditions, neither prior coverage requirements nor recent flexibility has brought wireless service to numerous rural areas. Commenters from each of the four states have heard from members of the public in rural areas regarding the lack of wireless service, especially wireless telephone service. Commenters in each of the four states have conducted various forms of investigation into the state of wireless service availability and have concluded that there are substantial gaps in rural service availability despite the progress that has been made to date.³ This should come as no surprise to anyone who has spent significant time living or working in or with rural communities. While wireless lines now exceed landlines nationally, many rural communities lack reliable wireless telephone service. While metropolitan areas may choose from competing broadband providers and benefit from multi-megabit wireless data services, many rural communities still lack broadband.

³ For example, the North Dakota PSC has requested coverage estimates from wireless service providers and has conducted consumer surveys as part of its "Zap the Gap" initiative. The ConnectME Task Force (the predecessor to the ConnectME Authority) has studied the extent of wireless gaps in the state of Maine and the Maine Office of the Public Advocate has collected information from consumers on dead zones through an on-line reporting form. The Vermont Department of Public Service included questions about consumer perception of wireless coverage in a 2003 telephone survey. The Vermont Wireless Infrastructure Advancement Program (currently at the Office of the Chief Information Officer) has conducted drive-tests of wireless signal strength along Vermont roads in 2006. The Nebraska Public Service Commission has conducted public hearings in various parts of the state on the extent of wireless service coverage.

14. The Commission has worked to eliminate unintentional barriers to rural coverage in prior performance requirements. Previous population-based coverage requirements tended to encourage new licensees to cover population centers, even when they already had service from multiple prior licensees.⁴ Rural areas tended to make a lower contribution toward meeting license requirements. In adopting the “substantial coverage” standard, along with a number of safe harbors, the FCC made it less likely that a service provider with a rural-focused business plan would not meet license requirements.

15. However, merely removing unintended barriers to rural wireless service in license requirements is not enough. License requirements are not the only reasons that service providers have not provided more extensive service. In the 700 MHz spectrum, licensees should have an affirmative duty to provide service to the widest range of their license areas.

16. Stronger rural coverage requirements will require licensees to confront the challenges to providing service in more sparsely populated areas, or to make available rural spectrum to those who will though secondary markets. No licensee is forced to accept these challenges. Seeking a license and its obligations is voluntary. Licenses should not go to bidders who will not undertake to provide service throughout their license areas when there are other bidders who are willing to do so.

17. The Commission need not adopt a general policy of high coverage requirements in all bands to adopt such a policy for the 700 MHz bands. The 700 MHz bands are especially well suited to such a policy, due to their greater signal propagation compared to the higher-frequency

⁴ Report and Order and Notice of Proposed Rulemaking, *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, WT Docket No. 01-14, *Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation*, WT Docket No. 03-202, (FCC 04-166, released Sept. 27, 2004), ¶ 76 (*Rural Report and Order*).

bands that have been auctioned in the recent past. If there is any band in which the Commission should adopt such a policy, it is this one.

B. Proposed Coverage Requirement

18. For blocks auctioned on a CMA basis, the Commission should adopt a very high, population-based requirement as its basic coverage requirement: providing coverage to 90% of the population in the license area if the licensee is offering mobile or fixed point-to-multipoint services. Licensees should achieve this level of coverage within eight years of commencement of the license, with an interim milestone of 50% coverage by population at the five-year point.

19. It is essential that any population-based coverage requirement be high. The Commission noted in the *Rural Report and Order*, population-based coverage requirements have tended to encourage licensees to serve the most densely populated parts of their license areas, even if they are served already by multiple wireless service providers.⁵ But if the population-based requirement is set high enough—the 90% coverage level we have urged—it would tend to exhaust the opportunities in densely-populated areas, requiring them to serve rural populations.

20. The Commission should also establish a safe harbor alternative to the population-based requirement for licensees that wish to focus primarily on rural service. Currently the “substantial service” coverage requirement includes a safe harbor that allows a licensee providing mobile or point-to-multipoint fixed service to meet its obligations by serving 75% of the geographic area of 20% of the rural areas in its service territory. This provides a good model for an alternative to a population-based requirement, but the coverage required is still too low. Instead, the safe harbor for 700 MHz blocks auctioned on a CMA basis should be 75% of the area of the entire license at

⁵ *Rural Report and Order*, ¶ 76.

eight years from commencement of the license, with an interim milestone of 40% of the area at five years.

21. The Commission should not rely solely on loss of licenses or license areas as a penalty to meet interim milestones, final coverage requirements, or coverage commitments. Communities are harmed when they are not provided service in a timely fashion by licensees that have committed to do so. Licensees should have an incentive not to simply walk away from their commitments if performance becomes more difficult than they originally estimated. In cases of failure to meet performance requirements, the Commission should impose financial penalties up to the amount of the winning bid for the license area, depending on the extent of non-performance, in addition to any re-licensing remedies that the Commission may impose.⁶

22. Finally, in demonstrating that they meet coverage requirements, licensees should be required to demonstrate that service is being actively made available to users in the local areas within the licensed territory. Coverage provided by so-called “license preservation” sites should not be counted toward requirements if the sites do not provide a bona fide service to users in the local area.

IV. ADOPT KEEP-WHAT-YOU-USE

23. The Commission has sought comment on whether it should adopt for the 700 MHz spectrum a keep-what-you-use mechanism wherein it would reclaim any “unused” spectrum in a license area after a pre-defined period of time. The Commenters urge the Commission to do so.

⁶ The extent to which the Commission imposes financial or re-licensing penalties should depend upon the degree to which the licensee fails to meet performance requirements. For example, it might very well be appropriate for the Commission to respond to a licensee who has not undertaken timely site acquisition efforts and grossly misses coverage requirements with license revocation and a heavy financial penalty. On the other hand, in the case of a licensee who has undertaken substantial site acquisition and construction efforts, and comes within a few percentage points of achieving 90% coverage, it may be more appropriate to levy a small financial penalty and only relicense unserved areas on a keep-what-you-use basis.

This important spectrum is being made available to licensees to serve the public. No licensee should be able to retain unused spectrum after a reasonable period of time, as described in the next two paragraphs. This will encourage licensees to build out their license areas and will reduce the extent of unserved areas. It will promote efficient transfer of spectrum from those who cannot or will not provide service in a given area to those who will.

24. Licensees failing to meet interim milestones or final coverage requirements should be subject to having unserved areas within the license area immediately made available to other licensees on a keep-what-you-use basis, in addition to the potential for license revocation. The Commission should also reclaim unused spectrum at the conclusion of license terms.

25. Licensees opting to use a geographic area-based safe harbor should be required, within three years of the commencement of the license, to designate the geographic areas that they intend to serve to fulfill their license. Remaining areas should be immediately made available for re-licensing on a keep-what-you-use basis.

26. A triggered keep-what-you-use mechanism would place an additional burden on potential service providers, who may be small and have limited resources, to engage in a proceeding at the Commission that may be contested by the incumbent license holder. This could decrease certainty among service providers and reduce the efficiency of a keep-what-you-use mechanism. Instead, the Commission should actively reclaim unused spectrum and list its availability.

27. While the Commenters believe that keep-what-you-use would likely be especially beneficial to rural areas that are less likely to be served, we see no reason why a keep-what-you-use re-licensing mechanism should be limited to rural areas. Likewise, we see no reason at this time to limit its application to only a portion of the spectrum that would be reclaimed.

28. Licensees should be required to demonstrate that they are using spectrum in ways that go beyond the presence of a signal. Licensees should show that they are marketing or engaged in

other outreach efforts in the local community to build a user base. Save for exceptional circumstances, licensees should be required to demonstrate that they have actual users in all areas that they provide signal. For services offered to the public on a pay-to-use basis, licensees should demonstrate that service using the frequencies is commercially available in the communities that have coverage within the license area. These types of showings should help demonstrate “use” across the range of services authorized by the commission for this spectrum.

29. The Commenters note that the Commission and the Congress have undertaken extensive efforts to clear 700 MHz spectrum that has been underutilized. The Commission should now place a high priority on licensing it to those who will put it to use.

V. CRITERIA FOR RENEWAL

30. The Commission should use the occasion of a renewal application as an opportunity to review the extent to which an applicant has met performance requirements. There is no reason, however, to delay review of performance requirements that mature before the end of a license period until the expiration of a license.

31. Licensees that fail to meet performance requirements should not be entitled to a renewal expectancy.

32. The Commenters do not object to replacing a renewal process based on competing proposals with one based on performance criteria, so long as the criteria establish a high standard of performance, such as the ones proposed in these comments, and so long as unserved areas are available to other providers under a keep-what-you-use mechanism.

33. The Commission should not default to a re-auction in license areas that do not receive license renewal. In areas where provision of service has been delayed due to the failure of a license holder to meet performance requirements, the Commission should seek out proposals

from service providers to provide service within the license area, and make awards that consider the applicant's ability to provide service on an expedited basis.

VI. PROVIDE LONGER LICENSE TERMS WITH HIGHER PERFORMANCE EXPECTATIONS

34. The Commission has sought comment on whether it should adopt a longer license term for 700 MHz licenses, which are generally set to expire on January 1, 2015, under current rules. If the Commission increases performance requirements and adopts a keep-what-you-use mechanism, it would be appropriate to provide licensees with a longer license term, such as a ten year license term. This may increase regulatory certainty for licensees and improve their ability to raise capital, plan, and deploy networks. High performance requirements and keep-what-you-use should provide sufficient assurance that spectrum will not be tied up unused in a license for extended periods of time. However, as stated previously, performance reviews should not be delayed to the end of the license term.

35. License periods for previously auctioned spectrum in the 700 MHz band should not be extended unless performance requirements are increased along the lines of those proposed here for the unauctioned 700 MHz blocks.

VII. ALLOW GREATER RURAL POWER OUTPUT FLEXIBILITY

36. The Commission has sought comment on whether it should increase allowed licensed power from 1 kW to 2 kW ERP for rural market areas in the upper 700 MHz band. Since rural areas face the challenge of covering populations spread out over a greater distance, the Commission should adopt the additional flexibility that higher power would provide licensees in meeting coverage requirements.

VIII. USE SECONDARY MARKETS AS A COMPLEMENT TO OTHER MECHANISMS

37. The Commission has sought comment on additional actions that it should take, beyond those taken in its *Secondary Markets* proceeding, to facilitate access to spectrum through secondary markets, and the advantages and disadvantages of a secondary markets approach versus other approaches such as keep-what-you-use.

38. The availability and use of secondary markets is desirable and it should reduce the need for the Commission to enforce mechanisms such as keep-what-you-use and license revocation. Nevertheless, the Commission should not rely on secondary markets as a substitute for these mechanisms. Indeed, establishing a strong likelihood of Commission action to remove spectrum from licensees who are not using it is a meaningful step that the Commission can take to promote the development of secondary markets. By making unused spectrum a perishable resource from license holders' perspective, they will be motivated to seek out those who can provide the greatest value through putting it to use.

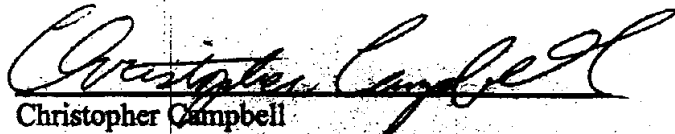
39. The Commission should use its oversight role during the license renewal process to review a 700 MHz Band licensee's actions during its license term, including its participation in secondary market transactions. While other mechanisms, such as keep-what-you-use, may more effectively address access to spectrum through geographic partitioning, review during renewal can be useful to ensure that licensees are making unused spectrum available through disaggregation of spectrum blocks, where appropriate. Licensees who are not using portions of their spectrum should be required to demonstrate that they have made reasonable bona fide efforts to offer unused spectrum on secondary markets. Licensees who fail to do so should be subject to disaggregation of their spectrum by the Commission and reclamation of unused blocks.

IX. CONCLUSION

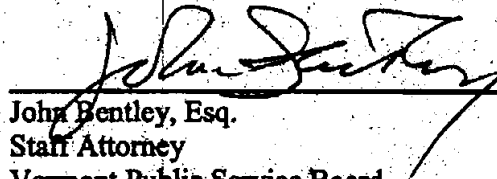
40. This NPRM presents an opportunity for the Commission to take strong action to bring the benefits of wireless services to rural America. The 700 MHz spectrum is an ideal spectrum in which to take the steps recommended in these comments.

Respectfully submitted this 29th day of September, 2006.

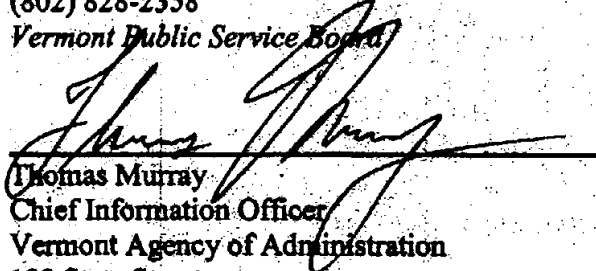
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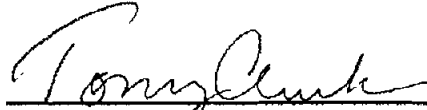


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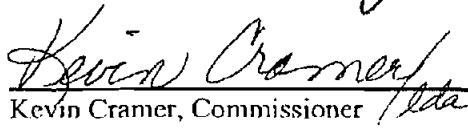
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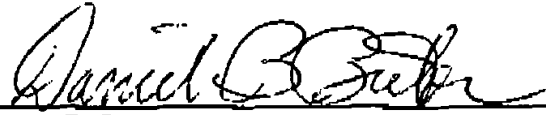
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A handwritten signature in black ink, appearing to read "Shana Knutson", written over a horizontal line.

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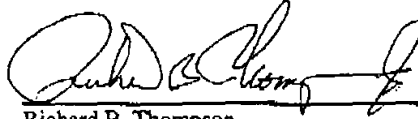
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